

REMARKS/ARGUMENTS

Applicant acknowledges receipt of the Office Action dated November 18, 2009. By this Response, claim 1 is amended. Claims 1, 3-8, and 10-20 are pending in this application. Claims 1, 3-8, and 10-20 are rejected under 35 U.S.C. §103 as being unpatentable over Engel, U.S. Patent No. 2,911,291 (“*Engel*”). Claims 1, 3-8, and 10-20 are also rejected under 35 U.S.C. §112 as being indefinite. Applicant believes the pending claims are allowable over the art of record and respectfully requests reconsideration and allowance of all claims.

I. **Claims 1, 3-8, and 10-20 are patentable over *Engel*.**

Applicant respectfully traverses the Examiner's rejection of claims 1, 3-8, and 10-20 under §103 as being unpatentable over *Engel*. Applicant submits that the Examiner has not made a *prima facie* case of obviousness in rejecting such claims as amended.

Claim 1 is an independent claim upon which claims 3-8 and 10-20 depend. Claim 1 as amended recites that the “probe includes an elongate cylinder portion which is arranged to rotate about a longitudinal axis of the elongate cylinder portion and to move longitudinally to enable the cylinder to be immersed in the sample.” Nothing in *Engel* teaches or suggests that the probe is arranged to move longitudinally to enable the cylinder to be immersed in the sample. For instance, the vanes taught in *Engel* are clearly arranged to only rotate and not to move longitudinally.

In view of the recitations in independent claim 1 that are neither taught nor suggested by *Engel*, the Applicant respectfully submits that independent claim 1 is allowable over *Engel*. Applicant therefore requests that the Examiner withdraw the §103 rejections of dependent claims 3-8 and 10-20, since it is submitted that independent claim 1 is allowable. Dependent claims 3-8 and 10-20 must be allowable, since they carry all the limitations of the allowable independent claim 1 to which they refer.

II. **Claims 1, 3-8, and 10-20 are not indefinite.**

Applicant respectfully traverses the Examiner's rejection of claims 1, 3-8, and 10-20 under §112 as being indefinite. Specifically, the Examiner has set forth that “[i]n claim 1, on line 6, ‘its’ is

Appl. No. 10/577,501
Response to Office Action
Dated November 18, 2009

unclear." Please note that by this Response, Applicant has amended claim 1 to delete the recitation "along its length". Therefore, Applicant respectfully submits that claim 1 as amended is not indefinite and is allowable. Dependent claims 3-8 and 10-20 must be allowable, since they carry all the limitations of the allowable independent claim 1 to which they refer.

III. Conclusion

Applicant respectfully requests reconsideration, allowance of the pending claims and a timely Notice of Allowance be issued in this case. If the Examiner feels that a telephone conference would expedite the resolution of this case, the Examiner is respectfully requested to contact the undersigned.

In the course of the foregoing discussions, Applicant may have at times referred to claim limitations in shorthand fashion or may have focused on a particular claim element. This discussion should not be interpreted to mean that the other limitations can be ignored or dismissed. The claims must be viewed as a whole, and each limitation of the claims must be considered when determining the patentability of the claims. Moreover, it should be understood that there may be other distinctions between the claims and the prior art that have yet to be raised but which may be raised in the future.

Respectfully submitted,

/ttumey/
Tod T. Tumey
Tumey L.L.P.
Reg. No. 47,146
P. O. Box 22188
Houston, Texas 77227-2188
(713) 622-7005 (Phone)
(713) 622-0220 (Fax)
ATTORNEY FOR APPLICANT